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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3671 OF 2006

Walter Varulkar, Partner
Kalpana Art Studio ... Petitioner
V/s
Vasant Pandurang Jadhav & anr. ... Respondents

Mr. V.P. Vaidya for the petitioner.
Mr. Amol Desai for the respondents.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 7TH AUGUST, 2007.

P.C.:

1. Rule. Rule made returnable forthwith. By consent, the petition is taken up for final hearing.

2. The petition challenges the order dated 22.2.2006 passed on Misc. Application (IDA) No. 44 of 2004 in Reference (IDA) No. 595 of 2002. Misc. Application No. 44 of 2004 was filed against an ex-parte award passed by the Labour Court directing reinstatement with full back wages and continuity of service to the workman, the respondent No.1 herein.

3. The main contention raised by the petitioner is that the Labour Court has misdirected itself while rejecting the miscellaneous application. It is submitted on

behalf of the petitioner that the Labour Court has relied on the judgment of the Supreme Court in the case of **Sangam Tape Co. v/s Hansraj, reported in 2004 II C.L.R. 776,** which dealt with a case under the Industrial Disputes (Central) Rules and not with Industrial Disputes (Bombay) Rules. It is submitted that Rule 26(2) of the Industrial Disputes (Bombay) Rules empowers the Labour Court to decide the miscellaneous application for setting aside an ex-parte order, if the application is made within 30 days of the receipt of a copy of the Award. A similar provision is not contained in the Industrial Disputes (Central) Rules and therefore the Labour Court becomes functus officio after 30 days from publication of the Award. Under the Industrial Disputes Act read with the Industrial Disputes (Central) Rules, the Labour Court is empowered to take cognizance of an application for setting aside the Award within 30 days of its publication. The provisions of Rule 26(2) of the Industrial Disputes (Bombay) Rules are completely different.

4. In the present case, the Labour Court passed an ex-parte Award on 8.3.2004. It was published on 12.5.2004. According to the petitioner, he received a copy of the Award only on 25.5.2004 alongwith a letter of the respondent workman. The petitioner has stated

that he has not received the Award from the Government after it was published. On receipt of a copy of the Award, the petitioner filed an application for setting aside the Award, on 21.6.2004. Thus, the application has been filed within 30 days of the petitioner obtaining knowledge of the Award having been passed against him. In such circumstances, the Labour Court ought not to have dismissed the miscellaneous application on the ground that it had become functus officio.

5. The impugned order indicates that the Labour Court was of the view that the petitioner had sufficient cause for not appearing when the reference was heard. The firm was closed since May, 2002 and, therefore, the notice issued had not been received. After giving this finding, the Labour Court has dismissed the application in view of the judgment of **Sangam Tapes Co. (Supra)**.

6. The order of the Labour Court holding that it has become functus officio, is set aside. The finding of the Labour Court that the petitioner had sufficient cause for not remaining present when the reference was decided is accepted. The reference is restored to file. The petitioner shall file his written statement within four weeks from today.

7. Petition disposed of accordingly.

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